

Certificate of Mailing/Transmission (37 C.F.R. § 1.8(a)):

[X] Pursuant to 37 C.F.R. § 1.8, I hereby certify that this paper and all enclosures are being transmitted via the Patent and Trademark Office electronic filing system on the date noted below.

Dated: December 21, 2009

Name of Person Certifying: /Guy Cumberbatch, Reg. No. 36,114/
Printed Name: Guy Cumberbatch

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Huynh, et al.) Group Art Unit: 3738
Application No.: 10/802,314) Examiner: Brian E. Pellegrino
Filing Date: March 17, 2004) Confirmation No.: 3894
For: LOW-PROFILE HEART VALVE SEWING) **Customer Number: 30452**
RING AND METHOD OF USE)

Mail Stop APPEAL
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION TO THE DIRECTOR UNDER 37 C.F.R. §1.181

Dear Sir:

An Appeal Brief has been filed in this application appealing from the final rejections of claims 1-21 in the FINAL Office Action dated March 20, 2008. The Appeal Brief was timely filed on September 22, 2008. A Notice of Non-Compliant Appeal Brief dated July 20, 2009 asked for correction of the claim explanation section 41.37(c)(1)(v), and Appellants responded with a Supplemental Appeal Brief on August 21, 2009. On November 23, 2009 a further Notice of Non-Compliant Appeal Brief was filed citing the same section. Moreover, the latter Notice dismissed the Appeal and stated that the application was abandoned.

Pursuant to the guidance provided in MPEP §1205.03, Appellants petition the Director to a) overrule the holding of non-compliance dated November 23, 2009, or b) accept the filing of the attached THIRD Supplemental Appeal Brief correcting the deficiencies noted.

It is not clear whether a Petition fee is due; section 1.181(d) refers to a fee in “the appropriate section of this part,” and section 41.3(c) states that no fee is due for petitions “seeking supervisory review.” However, if a Petition Fee (e.g., \$400 under 37 CFR §41.20(a)) is deemed necessary, please charge it to Deposit Account No. 50-1225 (ECV-5539CON).

In the July 20 Notice of Non-Compliance, Deborah L. Perry the Supervisory Paralegal Specialist pointed out in detail that the claim explanation section 41.37(c)(1)(v) should refer to the original page and line numbers and not to the paragraphs from the published application. No mention was made of any substantive deficiency, the page and line number cross-reference being the only apparent defect.

Serial No.: 10/802,314
Docket No.: ECV-5539CON
Third Supplemental Appeal Brief dated December 21, 2009
Responsive to the Notice of Non-Compliant Appeal Brief dated November 23, 2009

Subsequently, in the August 21 Supplemental Appeal Brief, Appellants made a bona fide attempt to address the deficiencies noted by replacing the published paragraph references with the corresponding page/line number references. This would appear to be a complete response based on the July 20 Notice of Non-Compliance.

Now, in the November 23 Notice of Non-Compliance, Examiner Pellegrino requests further substance as to the claim element references. In a telephone conference on December 14, 2009, Examiner Pellegrino explained to the undersigned that more detailed support for the claim elements was required.

Appellents Petition the Director and Examiner to accept the previously submitted SECOND Supplemental Appeal Brief of August 21 because it addressed all of the deficiencies that were cited. Specifically, Supervisory Paralegal Specialist Perry only enumerated **technical** deficiencies, nothing of substance. The Supplemental Appeal Brief was responsive.

Alternatively, and based on the aforementioned telephone conference, Appellents Petition the Director and Examiner to accept the **THIRD** Supplemental Appeal Brief attached hereto which adds further references to the specification and drawings for claim elements in the independent claims.

If this Petition is granted, Appellants assume that the Appeal will be reinstated and that no abandonment of the application will have occurred.

Respectfully submitted,

Date: December 21, 2009

/Guy Cumberbatch, Reg. No. 36,114/
Guy Cumberbatch, Reg. No. 36,114
(805) 201-3006
c/o Rajiv Yadav, Ph.D., Esq., Reg. No. 43,999
Edwards Lifesciences - Law Department
One Edwards Way
Irvine, California 92614
Telephone: (949) 250-6801
Facsimile: (949) 250-6850
Customer No. 30452